1896

Strikes and the Rights of and Remedies against the Strikers

R.A. Gunnison
Cornell Law School

S T R I K E S

and the

R I G H T S of and R E M E D I E S

against

T H E S T R I K E R S .

Thesis

presented by

R. A. Gunnison, '96,

for the degree of

LL.B.

C O N T E N T S .

illegality not sufficient to warrant an injunction - actual or threatened interference with property necessary - peaceable combinations or strikes not to be enjoined - Courts of Equity have power to punish for contempt, those who disobey their orders.

A strike is largely a growth of the present century There are accounts of strikes in the past but as now known , its growth has been so recent that one may almost say within the last half century.

Two accounts of early strikes are found in 27 Am. Law Review 708, one in 310 B.C. among the flute players in the Temple of Jupiter, because they were not allowed to hold their repasts in the Temple. The other occurred in 474 A. D. for an increase of wages. It resulted in the passage of an ordinance punishing the strikers.

The legal writers and the courts agree in the main to define a strike as "a combination among laborers or those employed by others to compel an increase of wages, a change in the hours of labor, a change in the manner of conducting the business of the principal or to enforce some particular policy in the character or number of men employed or the like." Anderson's Law Dictionary . The definition is taken from D. & H. R.R. Co. v Bowens, 58 N.Y. 573. Windfield's Adjudged Words and Phrases(1882) quotes the definition laid down in Farrer v Close, 4 Q. B. 612,"A strike is a simultaneous cessation of work on the part of the workmen"

Black's Law Dictionary (1891),says, "A strike is "the act of a body of workmen, employed by the same mas- "ter, in stopping work altogether at a prearranged time "and refusing to continue until higher wages or shorter "hours or some other concession is granted to them by "the employer." Another definition , "The term is ap- "plied commonly to a combined effort on the part of a "body of workmen employed by the same master to enforce "a demand for higher wages, shorter hours or some other "concession by stopping work in a body at a prearranged "time and refusing to resume work until the demanded con- "cession shall have been granted", is found in the Am. Encyclopedia of Law under "Strikes".

Bouvier's (1883) Law Dictionary says, "A strike is "a combined effort by workmen to obtain higher wages or "other concessions from their employers, by stopping "work at a prearranged time". None of these appear to include the sympathetic strike.

Certain elements are necessary to constitute a strike and they are (1) a combination or agreement (2) among workmen (3) to cease work simultaneously at a (4) prearranged time for the purpose of enforcing (5) some demand made by the strikers of their (6) employers, or in the case of a sympathetic strike , upon some other

person , upon whom their force is directly brought to bear. The strike does not occur until the employes have actually ceased work.

But as to the legality or illegality of the strike. In the Longshoremen's Assoc. v Howell, 38 Pac. Rep. 547, it is said, "a strike is not illegal per se". And Mr. Justice Harlan in Arthur v Oakes (C. C. A.) , 63 Fed. R 310, said," A combination among employes, having for "their object the orderly withdrawal in a body from the "service of their employer on account of a reduction of "their wages, is not,as a matter of law, within the mean- "ing of that word as commonly used. Such a withdrawal, "though amounting to a strike, is not illegal". In Ray's Contractual Limitations, after defining a strike the author says, "Its legality or illegality depends upon "the means by which it is enforced or upon its objects." It is evident from the above that the mere act of ceasing work for a lggal purpose in a peaceable and lawful manner, is, under the ordinary circumstances of a strike legal. But first,the legality depends upon the object and second, upon the mode of effecting the object.

At Common Law, any combination of laborers, whether for an increase of wages or any other object was illegal. It was irrebuttably presumed to be done with a mal-

icious intent and hence a conspiracy. In the earliest reported strike case, Rex v The Journeymen Tailors, 8 Modern 10, decided in the early part of the 18th Century the Court said, that while it was not an indictable offense for laborers to quit work for the purpose of securing a increase in their wages, yet a conspiracy or combination to do so was indictable. The early American cases held the same rule , among the first being Commonwealth v Pullis which was tried in the Mayor's Court of Philadelphia, in 1806, and afterwards reported in Wright's Law of Criminal Conspiracies. The shoemakers combined to compel others to quit work to enforce an increase in wages. This was held to be an indictable of fense.

Another Pennsylvania case , The Pittsburg Cordwainers Case, tried in 1815, held that a conspiracy to coerce an employer, to prevent men from following their trades or to compel them to join a society of workmen was unlawful . In Commonwealth v Carlisle, Bright's Pa. Cases, 36 , occurring in 1821, a conviction was had on a an indictment for conspiracy to reduce the rate of wages of journeymen shoemakers. The Court said, " A combina-
"tion is criminal whenever the act done or to be done has
"a necessary tendency to prejudice the public or to
"oppress individuals by unjustly subjecting them to the

"power of the confederates and giving the effect to the "purpose of the latter, whether extortion or mischief."

It was a serious matter to combine for any purpose whatever in those times for the rights of the employer were protected at the expense of the laborers, who were but slowing emerging from the serfdom of the preceding centuries. But gradually the sky cleared and in England by 6 Geo. IV, c. 129, an entire change was made. All statutes prohibiting agreements for the purpose of altering wages, hours or other matters between employer and employe, were enumerated and absolutely repealed. The statute confined future prohibitions to endeavors by threats, force, intimidation , molestation or obstruction to affect wages or hours. Such means were declared illegal but an agreement concerning wages or hours was legal provided its means of enforcement did not violate the above prohibition. This statute has served as a model for statutes in many of the United States.

During the time preceding the passage of the statutes in the United States, the Courts and legal writers had leaned toward the broader view as laid down in the Statute of King George. In the case of the People v Melvin, 2 Wheeler's C. C. 262, the New York Court holds that "a combination of journeymen which attempts by threats and fines to coerce workmen into a strike is a "conspiracy "and as such, illegal. It also intimates that

had peaceable means been used ,it would have been legal. The case of the People v Fisher, 14 Wend. 9, is similar to the above. Finally in 1870, the State of New York adopted the first of a series of laws , following the model of that adopted by England in the reign of George the Fourth.

The Courts had now arrived at the conclusion that "the orderly and peaceable assembling or co-operation "of persons for obtaining an advance in wages and for "maintaining such a rate , is not conspiracy." People v Wilzig, 4 N. Y. Crim. Rep. 403. See also People v Smith, 5 do.509. Cooley on Torts at p.229, says " It was "shown ----that the conspiracy was not of itself a legal "wrong. It is a thing amiss when it has an unlawful "purpose in view, but it does not become a legal wrong "until the unlawfulm purpose is accomplished or until "some act distinctly illegal, is done toward its accom-"plishment. Nor is it perceived that the end itself "can be unlawful if it can be accomplished by perfectly "lawful means." See also Bigelow on Torts #75-79; Clerk and Lindsall on Torts, p 15; Brientenberger v Schmidt, 38 Ill. Ap.168.

Bouvier's Law Dictionary says, "When this (meaning "ing the strike) is peaceably effected without any pos-"itive breach of contract, it is not unlawful."And Chief Justice Beardsley, of the New Jersey Court of Appealssaid

in State v Donaldson, 32 N. J. L. 151,"nor is there any "more doubt that though the purpose the confederacy is "designed to accomplish be not criminal, yet if the means "be of an indictable character, this offense(conspiracy) "is likewise committed."

So a strike may be lawful if its objects are lawful and the means by which the object is to be accomplished are also lawful. This raises the two distinct and pertinent questions: What is a lawful object of a strike? and What are lawful means of accomplishing this object when lawful?, for if either be illegal, the whole is tainted.

And,first, what is a lawful object? Perhaps the best method of determining this question is to ascertain what is not lawful as an object. The common idea attaching itself to the thought of a strike is that it is an endeavor on the part of the strikers to dictate to the employer . The wage question is a frequent cause of a strike and the object is to secure an advance. The first American case, Commonwealth v Pullis, cited above, was founded on a strike in the city of Philadelphia for an increase of wages and the Court held that "a combination "to compel other shoemakers to quit work to enforce an "increase in wages is an indictable offence " and so unlawful.

A Massachussetts case, Commonwealth v Hunt, Thatcher Criminal Cases 609, was of similar origen and was decided upon the same doctrine. see also People v Fisher ,supra.

The English cases of that time of which Reg. v Duffield, 5 Dox Crim. Cases 404, is a type, held that "workmen had not the right to conspire to compel an in-"crease of wages by abandoning the service of their "master or inducing others to do so." See also Reg. v Druitt, 10 Cox Crim. Cases 593. The dases of that time all held that a strike or combination to accomplish an increase of wages was an indictable offense.

But the change was soon effected. In the English case of Reg. v Rowlands, 17 Adol. and Ellis(N. S.) 671, the Court in charging the jury said, "The law is clear "that workmen have a right to combine to obtain such wag-"es as they choose to agree to demand. As far as I know "there is no objection in point of law to it." On appeal, the highest court of England said that the charge was correct. Lord Campbell ,C. J., said, in Hilton v Eckersley, 24 L. J. 353 at p. 359, "I cannot bring myself to "believe----- that if two workmen who sincerely believe " their wages to be inadequate, shall meet and agree "that they will not work unless their wages are raised, "without designing or contemplating violence or any il-"legal means of gaining their object, they would be guilty

"of a misdemeanor and liable to punishment. - - -The ob-
"ject is not illegal and therefore if no illegal means
"are to be used, there is no indictable conspiracy." The
latest English case on this subject is the Mogul Steam
ship company v McGregor, 15 Q. B. D. 477,in which Chief
Justice Coleridge lays down the rule at present applic-
able in England, thus, "A combination of workmen to ob-
"tain better wages is lawful so long as their object and
"purpose are not to injure another."

The case of the Master Stevedors' Association v
Walsh, 2 Daly 1, which holds that " an agreement among
"workingmen that they will not themselves work for less
"than a stipulated price, confined in its operation to
"those who have agreed to it , is not contrary to the
"law", is typical of the later American decisions. See
Thomas v the Protective Musical Association, 121 N. Y.45
Old Dominion Steamship Co. v McKenna, 18 Abb,(N. C.) 262
and People v Kostka, 4 N. Y. Crim. Rep. 429; Perkins v
Rogg, 28 Weekly Law Bulletin, 32; and the People v Wilzig
supra.

The proposition or rule to be deduced is that , a
combination or strike among workmen for the purpose of
effecting an increase in their wages is legal when those
combining honestly believe the desired increase to be
just and it is not to injure some one else and when the

means of accomplishing this object are legal means. In other words, the courts do not look upon such a combination as dictating to an employer. He is left free by such a strike to do as he pleases in regard to their demand

Now, those cases in which the object involves the employment or discharge of workmen, involving the right of the employer to employ whom he may choose . The cases upon this are all to be found within the last fifty years One of the first cases bearing on this point is Rex v Ferguson and Edge, 2 Starkie Reports 489. The defendants were charged with combining to leave their employment in order to prevent their employer from taking apprentices. There was a conviction and the case was appealed. Although the appeal was decided on points of evidence, the Court of King's Bench expressed no doubt as to the illegal nature of the offense. Rex v Rickerdyke, 1 M. & Rob. 179 was a colliery case. Laborers threatened to strike unless certain objectionable men were discharged. Mr. Justice Patterson held that the workmen had no right to meet and combine for the purpose of dictating to the master whom he should employ and that such an act was illegal. This decision was directly in point . Then there is the case of the Springhead Spinning Co. v Riley

holding that"every many had the liberty of employing or "being employed - - - and every man must respect the like "liberty in others."

It was held in People v Smith, supra, and affirmed in the People ex rel. Gill v Walsy, 6 N. Y. Crim. Rep. 292 , 110 N. Y. 633, that combining to procure employers to discharge specified workmen because of their refusal to join labor organizations of the accused, is a criminal offense. The Supreme Court of Massachussetts in the well known strike case of Walker v Cronin, 107 Mass. 555 said that the employer while he has no right to protection from competition has a right of being free from malicious or wanton interference, disturbance or annoyance. And Mr. Justice Beasley, in the New Jersey case, State v Donaldson, cited above, says , "It is not to be denied "that the alleged aim (to secure the discharge of some "workmen) of this combination was unlawful. The effort "was to dictate to this employer, whom he should discharge "from his employment. I cannot regard such a course of "conduct as lawful."

It was adjudged in the case of the State v Stewart, 59 Vt. 273, that an unlawful combination to prevent, by violence and intimidation a certain company from retaining and taking into its employment certain workmen is an indictable offense.

Mr. Cooley in his book on the Law of Torts says:"A "society of men may lawfully unite in agreeing that they "will not perform services for those,who employ laborers "not associated with them. But they become wrong-doers "the moment they interfere with the liberty of others". He cites Carew v Rutherford, 106 Mass. 1 in support of this, also the case of the Old Dominion Steamship Company v McKenna,cited above.

In these early cases, the doctrine that 'combinations for the purpose of dictating to an employer, were unlawful' was unqualifiedly laid down by the court. But as the cases progressed,that doctrine was modified so that in instances where there was no compulsion by any means, a strike or combination for the purpose of inducing an employer to change his employes is not unlawful in itself. Sir Frederick Pollock, in his Law of Torts, page 295, says: "It would seem to follow from the principles of the mod- "ern cases that it cannot be an actionable conspiracy for "two or more persons by lawful means, to induce another or others to do or abstain from doing what they are not "bound to do by law".

Another object,which has been held lawful,is the betterment of the laborer's trade or condition. Judge Gibson in the early case of Commonwealth v Carlisle, cited above, says: "A combination to resist oppression, not

"merely supposed but real, would be perfectly innocent."

Among the last cases upon this is Reynolds v Everts reported finally in 144 N. Y. 189. But in the opinion at Special Term, Justice Smith states the present situation thus, "Irrespective of any statute, I think the law now "permits workmen, at least within a limited territory, to "combine together and by peaceable means to seek any leg- "timate advantage in their trade." See People v Kostka, supra; In re Wabash, 24 Fed. Rep. 217; L. Linheamer v the United Garment Workers' Association, 77 Hun 215, upon this topic.

But does 'any legitimate advantage' include combinations to compel workmen to join a particular society or union, or to prevent them from following their trade or calling? In the Pittsburg Cordwainers' case it was held that a conspiracy to prevent men from following their trade or to compel them to join a society of workmen, was unlawful. The same doctrine is held in the People v Kostka. Again in the Old Dominion Steamship Company v McKenna it was held that "all combinations or associations designed "to coerce workmen to become members of such combinations "or to interfere with, obstruct, etc, them in working ,etc " ---- are pro tanta illegal combinations and associations" Connor v Kent(1891) L. R. 2 Q. B. 545, is an English case

holding the same doctrine. But a recent Indiana case, Clemitt v Watson, 42 N.E. Rep.367, holds that "a combin-
"a tion among the Defendants to quit work unless the Plain-
"tiff was discharged, by reason of which he was thrown
"out of employment; or an agreement not to work with the
"Plaintiff , persuant to which they quit work, because the
"employer refused to discharge him, by reason of which
"the business was suspended and the Plaintiff was thrown
"out of work, is not actionable in the absence of malice."

The early cases hold that combinations or strikes for the purpose of causing workmen to join a society or to prevent them from working at their trade,were illegal no matter how the object might be accomplished. But in the wage question,the Courts have come to the conclusion that if the means used to accomplish the object are legal, the object itself is not unlawful. Thus it had been seen that workmen may combine and strike for the purpose of procuring an advance in the rate of wages, or to better their condition in any way; they may leave their work until a certain party is discharged or to induce certain workmen to join certain societies or unions, provided always that the means used to accomplish such objects are not of themselves unlawful.

But they may not strike maliciously for the purpose of injuring their employer or any other person for such a combination or strike would have for its object the violation of some other persons rights and liberties which in the United States are reserved to them by the Constitutional provisions.

Now, what are the lawful means? The common methods if traced in their growth will be found judicially determined ~~mined~~ within the last half century. It was held in Reg. v Duffield, supra, that "workmen had not the right "to compel-------- by abandoning the service of their "master or by inducing others to quit." That case illustrates how careful of the employers' rights the law at first, was. The case of Reg. v. Druitt coming a few years later laid down a somewhat less severe rule, that "combina-"tions of men to coerce that liberty by compulsion and "restraint is a criminal offense."

Turning to the American cases, the Master Stevedors' Association v Walsh, decided in 1867, that a strike to raise wages, which is legal in itself, "may, if carried "into effect by threats or acts of violence, amount to a "criminal conspiracy." Two years later in the State v Donaldson, it was held that where a body of workmen informed their employer that they would leave his factory

if a certain workman is not dismissed, " coercion is there "in that they agree to leave simultaneously in large "numbers and by a preconcerted action. It is equivalent "to a threat that unless he yields to their unjust demands "they will derange his busiess." Here the mere act of quitting their employment in a body, is considered a coercion.

Mr. Justice Brewer, in delivering an oral opinion in the United States v Kane, 23 Fed. Rep. 748, said,"The "employes - - - - may abandon the employment and by per- "suasion and argument induce other employes to do the same; "but if they resort to threats or violence to induce the "others to leave or accomplish their purpose without ac- "tual violence by overawing the others by preconcerted "demonstrations of force - - - they may be punished for "their unlawful acts." Here, for the first, is the right of the striker to use argument and persuasion to induce other strikers to leave, recognized. But again in the former case threats, violence or even intimidation are expressly prohibited and in the latter, the prohibition is implied. Even demonstrations of force for the purpose of intimidation may not be used.

In 1887, the Old Dominion Steamship Company v McKenna is authority for the statement that all combinations

designed to coerce workmen to become members of such combination or to interfere with, obstruct etc. them in working etc., to prevent employers from conducting their business , or to interfere with the perfect freedom of the employers etc., by threats or injury or loss, by interfering with their business etc., are illegal combinations and all acts done in furtherance of such intention by by such means and accompanied by damages are actionable.

Again "while the law permits striking workmen to "persuade and induce other workmen to cease labor and join the strikers in their demand for higher wages, such "strikers have no right to interfere by threats , intimid- "ation or coercion with the free will of such other work "men." Perkins v Rogg, supra. Cooley on Torts at p.331 says, "Acts done in persuance of a conspiracy may be un- "lawful in themselves if they include deception, intimida- "tion , threats or any species of duress whatever when "employed upon laborer or employer."

The last great strike case decided in New York state was Reynolds v Everts and in the opinion at Special Term 17 N. Y. Sup. 264, Justice Smith, after recognizing the illegality of the interference of strikers by threats, intimidation or coercion of any kind with the free will of the workmen and, also, recognizing the right to strike for

certain objects, says,"The right to combine involves of "necessity the right to persuade all co-laborers to join "the combination. This right to persuade co-laborers in- "volves the right to persuade new laborers to join the "combination. This is but a corollary of the right of "combination. But,whenever the strikers assume toward the "employes, an attitude of menace, then persuasion and en- "treaty with words however smooth , may constitute intimid- "ation which will render those who use them,liable to "the penalties both of civil and criminal law."

Thus, in the beginning of the law of strikes, a strike or combination was illegal, indictable under any circumstances. But,gradually,the courts sifted the cases, placing those conducted by persuasion and argument within the pale of the law and leaving those conducted by threats, violence, intimidation and coercion outside. But this was not reached all in a moment or without a dissenting voice. At least one case is cited above in which it was held that, "leaving the employment in a body" was in it self intimidation and coercion. This view,however,was but that of the minority and to-day a quiet, orderly strike whose members use only persuasion, argument and other peaceable means to attain their object, is perfectly legal and may be carried on with impunity, so long as their ob-

ject is itself legal.

But now arises the question as to what constitutes intimidation or coercion. There are certain acts which frequently, if not always, accompany strikes. They are boycotts, picketing and riots or mob violence.

The very idea of a boycott, i.e. to prevent a person from carrying on his business, is illegal for on the face, it is the intention to injure the person against whom it is declared. It is a threat carried into execution. a threat to ruin A's business, unless he concedes to the demands made upon him and "a threat must be an intimida-"tion made with the intention of forcing and unduly influen-"cing the person's conduct against whom it is addressed." Wood v Bowron, L. R. 2 Q.B. 21. And it was held that the sending of notices of a strike to be continued until the dismissal of a non-union man, was the sending of threats and so illegal. Skinner v Kitch, L.R., 2 Q.B. 393. also Springhead Spinning Co. v Riley, 6 Eq. Cases 851.

In an attempt to extort money from a party by means of a boycott, it was held that intimidation did not necessarily require physical violence. But that the attitude and numbers of the strikers, placards or other devices used, might constitute intimidation. People v Wilzig, supra.

This case intimates that the boycott itself would constitute intimidation and thus be illegal.

A distinction between a strike and a boycott is drawn in Toledo, Ann Arbor and North Michigan R.R. v the Pennsylvania R.R., 54 Fed. Rep. at p. 738, where it was held that "the one combination was lawful because it was for the "lawful purpose of selling the labor of those engaged in it "for the highest price attainable and for the best terms. "What the employes threatened to do, was to deprive the "defendant companies of the benefit accruing from their "labor in order to induce, procure and compel the companies "and their managing officers to consent to a criminal and "unlawful injury to the complainant. Neither law nor morals "can give this right to the laborer or withhold it from "the others for such a purpose." See also Sherry v Perkins 147 Mass. 212. So the boycott is of itself illegal and as such may not be used as a means of attaining the object of the strike.

"Picketing is another mode of intimidation resorted to "at times and it consists of posting members of the strikers "organization at the approaches to the works of the employer who thereupon attempt to warn off the workmen by "persuasion or intimidation." This may or may not be un- "lawful according to the degree of intimidation used. If

"persuasion alone is resorted to there is no breach of "of the law." American Encyclopedia of Law V 24, p 132.

In Reg. v Druitt, it was held that mere picketing if so done as not to excite unreasonable alarm, or as not to coerce or annoy, was no offense in the law. But if pickets indulged in abusive language or alarming gestures, to becomes at once illegal. Other English cases holding the same doctrine are Reg. v Shepherd, 11 Cox Crim. C.325; Reg. v Duffield, supra; Reg. Bauld, 13 Cox Crim, C. 282.

In the United States, the Courts have differed considerably over the legality of picketing. The early cases of People v Kostka, supra; People v Wilzig, do., Crump v Commonwealth, 85 Va. 927; and Brace v Evans, 3 Ry. and Corp. Law Journal held it unlawful. But this sweeping rule has from time to time been modified until it was laid down by Mr. Justice Smith in Reynolds v Everts at Special Term and not contradicted by the upper Courts when appealed that so long as pickets were peaceable in bearing and language toward the employes, and their numbers were not sufficient to be an intimidation, picketing is lawful. But the moment that force, violence etc., are introduced, it ceases to be lawful. See also United States v Kane, supra; Perkins v Rogg, supra; Richter v the Journeymen Tailors, 24 Weekly Law Bulletin, 189.

But in carrying out this picket duty, "No man has a "right to enter the premisis of another for the purpose "of inducing persons in the employment of that person to "leave their employment." Webber v Barry, 38 N.W. Rep.289. They may, however, offer money to pay the return fare or the expenses of those who have taken their places, as an inducement to them to join the strike. Reynolds v Everts, supra.

The last of the accompaniments of the strike is the riot or mob violence, which is defined as, "Where three or "more persons actually do an unlawful act of violence with "or without common cause." 4 Bl. Com. I46. The same definition is laid down in the case of Whitley v the State, 66 Ga. 656. Another definition is "a tumultuous disturbance "of the peace by three or more persons assembling together "of their own authority with an intent, mutually to assist "the other against any one who shall oppose them in the "execution of some enterprise of a private nature and af- "terwards actually executing the same in a violent and "turbulent manner, whether the act itself was illegal or "not when intended." State v Russell, 45 N. H. 84.

The definitions show at once the unlawful character of the acts and it is apparently needless to cite cases upon this point.

From the foregoing pages it will be seen that workmen may combine and even strike for the purpose of bettering their condition in any way. They may do so to obtain an advance in their wages or if a co-employe is objection able and the employer refuses to discharge him, they may agree to and actually quit their employment until such objectionable person is discharged. In short the cases now tend to hold that workmen may combine and strike for any object, so long as that object is not to injure some other person and the strike is not accompanied by malice.

It has also been shown that peaceable means such as argument, persuasion and entreaty are legitimate methods of accomplishing the desired ends; but that threats or intimidation, though no actual violence has been used, is considered a means of unlawful coercion, as bad in the eye of the law as actual force or violence; that picketing as a means of carrying on a strike may be lawful so long as the demeanor of the picket is quit and peaceable and the pickets are not in such numbers as to awe the employer or employes into acquiescing; that boycotts and riots are unlawful in themselves.

And it now remains to learn what remedies the employers have, if any , against the strikers and the development of them. These remedies are of two kinds, legal and equitable and will be considered in that order.

The remedy at law is, of course, in damages. In Bigelaw on Torts it is laid down that, "when conspiracy is "made the ground of a civil action, it must have caused "damages". So it is plain that the mere strike without damages, offers the employer or the person against whom it was directed no remedy at law. The majority of actions at law which are the outcome of strikes, have been founded upon the enticing or driving away of servants or upon injury, resulting from interference with employes or the general business.

One of the English cases decided on this remedy is Hart v Aldridge, ICowper 54, in 1774. It was an action for trespass for enticing away some of the plaintiff's servants, who were employed to work by the piece. The Court said here, "It is clear that a master may maintain "an action for taking and enticing away his servants." Again where the facts were similar, the court held that the act of enticing away workmen, even though not working

under contract, constituted conspiracy and the defendant was liable in damages for such act. Guntor v Astor, 4 Moore(Eng.) 12; Reg. v Rowlands, supra. The Court of the Queen's Bench, in Bowen v Hall, 6 Q. B. D. 333, sustained this doctrine of Lumley v Gye, 22 L. J.(Q. B.) 463, holding that it was actionable to induce a party to break his contract of service with the plaintiff.

The Mogul Steamship Co. v McGregor, 23 Q. B. D. 600 is another and a later case upon this subject. Lord Esher in his opinion said, "When an indictable conspiracy is "carried into execution by the conspirators by means of an "unlawful act or acts, which produce private injury to some "person, that person has a cause of action against the "conspirators." Here is found the broad rule that conspirators or strikers, who, by means of unlawful acts, cause injury with damage to some person, are liable to such person for such damages. Any act of the strikers which causes damage, will be a sufficient ground or an action by the damaged party.

The last of the series of leading English cases on this practically affirmed the rule just cited and specifically affirmed the liability for enticing away of servants whether under contract or not. It further said that the

"right of action for maliciously procuring a breach of con-
"tract is not confined to contracts in the nature of con-
"tracts for personal service." Templeton v Russell, (C.A. 1893) 1 Q. B. 715.

But to return to the doctrine in the United States. The early American cases were of a criminal nature and it was not until the middle of this century that civil actions were made use of against strikers. In Curran v Galen, 22 N.Y. Sup. 826, it was held that a complaint which charged the defendant, who represented certain labor organizations, with conspiracies to injure the plaintiff, in his business and character and to prevent his obtaining employment, etc stated a good cause of action.

A Georgia Court held that when parties knowing of the existence of a contract of labor, entices, hires or persuades the laborer so contracted to leave the employment of his first employer during the time for which he is so employed, the law gives the party so injured a right of action to recover damages. Jones v Blocker 43 Ga. 331; Also Salter v Howard, do. 601. It will also be seen that this case narrows the rule of liability for enticing away servants, to cases where the person so enticing, knows of the contract. In the same year, the Supreme Judicial Court of Massachussetts, in Cronin v Walker, supra., laid

down the same rule as that by the Georgia Court and said further,that,"the damage from which the recovery is had "is not loss of value of actual contract by reason of "their non-fulfillment but the loss of advantage , which "but for such interference, the plaintiff would have been "able to acquire."

The case of Haskins v Royster, 70 N. C. 601, holds the same rule concerning the enticing away of servants. However,this court did not insist, as in 107 Mass., upon allegation and proof of actual loss occasioned by such act. The mere act of enticing away the servants,was sufficient to render the liability. Bixby v Dunlop, 56 N. H. 456, though not a strike case, cites the above and holds with Haskins v Royster. While some of the cases cited above are against single individuals for enticing away servants, they apply as well where the enticing is by the strikers. And now the mere enticing away of servants or employes without allegation and proof of actual damage, will not constitute a cause of action.

The great case of this period was the Old Dominion Steamship Company v McKenna, supra, in which it was held that all acts done in furtherance of such"intention,i.e. "to coerce employes to join societies,, interfere with "business etc., and accompanied by damage are actionable."

Here, again, damage is made the essential element of the actionability of an act. "The gist of such an action must "not be in the combination or conspiracy but in the actual "loss occasioned thereby." Toeldo, Ann Arbor and Northern Michigan R. R. v Pennsylvania R. R. There the Court tersely puts the rule which Mr. Bishop, in his work on Non-Contract Law, lays down thus, "The rule in civil juris- "prudence is that one cannot maintain a suit for another's "wrongs, until he has been injured thereby ---. No wrong- "ful combination is actionable until the party complain- "ing has suffered damage. In an action at law, therefore the "material thing is to show an injury." That is a statement of the rule as it is today.

But the remedies most sought against the strikers are those afforded by Equity. And, first, the interlocutory or temporary injunction. When an application is made to the Court for an injunction, if it is shown that the injury will accrue to the applicant before the argument can be made for the permanent injunction, the Courts will grant what is known as a temporary injunction, pending the the disposition of a motion for a permanent injunction. This is granted upon affidavits and is seldom refused. See High on Injunctions.

It is a rule of Equity that its courts will not interfere when there is a complete and adequate remedy at law.

Or where there is no imminent danger or irreparable mischief before the tardiness of the law can reach it. City of Georgetown v Alex. Canal Co., 12 Pet. 91; Mogul Steam ship Co. v McGregor, supra.In Blendell Bros. v Hogan, 54 Fed. Rep. 40, the Court held that the jurisdiction of the Federal Circuit court to entertain a suit to enjoin a combination of persons from interfering with or preventing ship owners from shipping a crew may be maintained on the ground of avoiding a multiplicity of actions and because damages at common law would be inadequate and hard to ascertain. Where ,"the injury will be irreparable "and a judgment at Law will be wholly inadequate, the auth-" orities leave no doubt that in such a case, an injunction " will be granted against a stranger who thus intermeddles "and harrasses the complainant's business." T. A.A. & N.M R.R. v Pa. R.R., supra;Sherry v Perkins, do.; Springhead Spinning Co. v Riley, do.; Casey v Typographical Union, 45 Fed. Rep. 135.

But the mere fact that the act or acts sought to be enjoined are illegal will not be sufficient ground for a court of Equity to interfere. "Something more than the "threatened commission of an offense against the laws of "the land is necessary to call into exercise the injunc -

"tive powers of the Court. There must be some interference "actual or threatened with property or rights of a pec- "uniary nature." United States v Debs, 158 U. S. at 593. Arthur v Oakes, 63 Fed. Rep. 10; C. B. & Q. v B. C.R. & N 34 Fed. Rep. 481; Sherry v Perkins, supra. Nor is this injunction destroyed because the act enjoined are violations of the criminal law. U. S. v Debs. do. Cranford v Tyrrell 128 N. Y. 341; Mobile v L. & N. R.R. 84 Ala. 115.

However, "when there is a willful and unlawful invasion "of the plaintiff's rights, against his protest and re- "monstrance, the injury being a continuing one, a manda- "tory injunction may issue in the first instance." High on Injunctions, #2. An injury must be shown to the court, recurring and without remedy at law, before an injunction will be granted.

But the Court in Reynolds v Everts refused to make permanent an interlocutory injunction, "to restrain handi- "craftsmen from combining peaceably and without intimida- "tion, persuading their fellow workmen to leave the ser- "vice of their employer in order to compel an advance in "wages". See also Johnson Harvester Co. v Meinhardt, 60 How. Prac. 168; Maher v Journeymen Stone cutters' Association 47 N. J. Eq. 519. And when Reynolds v Everts was carried

to the Court of Appeals,(144 N.Y. 189), Judge Gray said "the mere apprehension of some future acts of a wrongful "nature, which might be injurious to the plaintiff, was "not a sufficient basis for insisting upon a preventative "injunction. Such a remedy becomes a necessity only when "it is perfectly clear upon the facts, that unless granted "the complainant will be irreparably injured and that he "can have no adequate remedy at law for the mischief oc- "casioned."

But the acts sought to be enjoined in the case cited above were peaceable and for a lawful object. Where persons attempt by threats and other unlawful means , to carry out an unlawful object, the State of Missouri, by its highest court enjoined them. Hamilton-Brown Shoe Co. v Saxey, 32 S'W. Rep. 1106.

And, finally,it is seen that Equity is the last resort of the injured party when law cannot redress his wrongs or where it will be a great burden for him to adopt the legal remedy, because of the difficulty in ascertaining the damages or because of the multiplicity of actions which must result from such mode of redress. That the Court of Equity, upon sufficient affidavits will grant a preliminary injunction, pending the hearing of the application for a permanent injunction, is well known . But then

comes the question as to when the temporary injunction will be made permanent. The cases hold the doctrine that Equity will not interfere with the peaceable acts of strikers. Nor will it interfere simply because the acts of the strikers are unlawful. The acts must threaten or actually interfere with some pecuniary interest of the party , so that injury is certain or imminent and such injury must be beyond the remedy of the law in any way, or else the legal remedy must be inadequate. But when these conditions have been fulfilled, Equity is ready to stretch forth her protecting arm.

And should those against whom the injunction is directed, neglect to obey it, they become guilty of contempt and liable to punishment by the Court. Mr. Justice Brewer, in the United States v Debs, says "But the power of the "Court to make an order carries with it , the equal power "to punish for the disobedience of that order and the in-"quiry as to the question of disobedience, has been from "time immemorial , the special function of the Court."

Case of Yates, 4 Johns. 314; Watson, v Williams, 36 Miss. 331; Cartwright's case, 114 Mass. 230; U. S. v Hudson, 7 Cranch 32; Anderson v Dunn, 6 Wheaton; 204; Ex parte Robinson, 19 Wal. 505; Mugler v Kansas, 123 U.S. 623; Eilenbecker v. Plymouth Co. 134 U.S. 31;

In brief, a court enforcing obedience to its own orders by proceedings in contempt is not executing the criminal laws of the land but only securing to suitors the rights to which, it has adjudged them entitled.

And so the Law of strikes, relating to the rights of the strikers and the remedies of their employers, have been brought down to the present time, the purpose of the thesis being not to trace out why the law is as it is, but How it became so in the course of time.

TABLE of CASES.

Lumley v Gye, 22 L.J. (Q.B.) 463.

Mogul Steamship Co. v McGregor, 15 Q.B.D. 477 - 23 Q.B.D.600
Master Stevedors' Assoc. v Walsh, 2 Daly 1.
Maher v Journeymen Stone Cutters' Assoc. 47 N.J.Eq. 519.
Mobile v Louisville & Nashville R.R. 84 Ala. 115.
Mugler v Kansas, 123 U.S. 623.

Old Dominion Steamship Co. v McKenna, 3o Fed. 48.

Peo. v Melvin, 2 Wheelers(NY) Crim. Cases, 262.
peo. v Fisher, 14 Wend. 1.
Peo. v Wilzig, 4 N.Y. Crim. Rep. 403.
People v Kostka, do. 429.
Peo. v Smith, 5 do. 507.
Perkins v Rogg, 28 W'kly Law Bulletin 32.
Peo. ex rel. Gill v Walsh, 5 N.Y. Crim Rep. 292 -110 N.Y 633

Reg. v Shepherd, 11 Cox C.C. 325.
Reg. v Bauld, 13 Cox C.C. 282.
Rex. v Journeymen Tailors, 8 Mod. 10.
Rex. v Shelby, 5 Cox C.C. 495.
Reg. v Duffield, do. 404.
Reg. v Druitt, 10 do 593.
Reg. v Rowlands, 17 Adol. & Ellis (N.S.)671.
Rex v Ferguson, 2 Stark 489.
Rex v Rickerdyke, 1 M & Rob. 179.
Reynolds v Everts, 17 N.Y.Sup. 264 - 144 N.Y. 189'

State v Donaldson, 32 N.J.L. 151.
State v Stewart, 59 Vt. 273.
Sherry v Perkins, 147 Mass. 212.
Skinner v Kitch, L.R. 2 Q.B. 393.
State v Russell, 45 N.H. 84.
Springhead Spinning Co. v Riley, 6 Eq. Cases 851.
Salter v Howard, 43 Ga. 6ol.

Thomas v Musical Protective Assoc. 121 N.Y.45.
Toledo, A.A. & N.M. R.R v Penn. R.R., 54 Fed. 738.
Templeton v Russell, (C.A. 1895) 1 Q.B. 715

U.S. v Kane, 23 Fed. 748.
U.S.v Debs, 64 Fed. 763- 158 U.S. 593.
U.S. v Hudson, 7.Cranch 32.

Walker v Cronin, 107 Mass 553.
Webber v Barry, 33 N. W. Rep. 289.

Wood v Bowron, L.R. 2. Q.B. 21.
Whitley v State, 66 Ga. 656.
Watson v Williams, 36 Miss 331.

-0-